

INITIAL STATEMENT OF REASONS

HEARING DATE(S):

December 29, 2020
WebEx/Teleconference

SUBJECT MATTER OF THE PROPOSED REGULATIONS:

Filing Appeals and Complaints with the Board, Compensation or Reimbursement for Voided Appointments, Right to Appeal or Reconsideration

SECTIONS AFFECTED:

Title 2, Chapter 1, California Code of Regulations Amend Sections 52.4, 243.3, and 243.6

In this rulemaking action, the State Personnel Board (Board) proposes to amend sections 52.4, 243.3, and 243.6 of Title 2, Chapter 1, of the California Code of Regulations.

PURPOSE, NECESSITY, RATIONALE, AND BENEFITS OF REGULATORY ACTION:

Background:

Existing Board rules provide that the Executive Officer, Board or Department of Human Resources (CalHR) may correct unlawful appointments by voiding the appointment under certain circumstances. (Cal. Code Regs., tit. 2, § 243.2.) In instances in which the Executive Officer, Board, or CalHR finds that the employee acted in other than good faith in securing the appointment, the employee is required to reimburse the state for compensation received during the period of the unlawful appointment. (Cal. Code Regs., tit. 2, § 243.3.) While section 243.3 currently references an employee's right to appeal to the Board challenging the amount of reimbursement ordered, it fails to provide for the procedures and timeline for filing the appeal.

Anticipated Benefits of the Regulatory Action:

The anticipated benefits of this regulatory action include: (1) updating the Board's appeal-related regulations to include the procedures and timeline for filing an appeal or petition for reconsideration challenging reimbursement ordered from a voided appointment and (2) conserving the fiscal interests of the state by clarifying the Board's hearing process standards.

Discussion of Each Amendment:

The purpose of amending these sections is to clarify the process for filing appeals or petitions for reconsideration challenging the voided appointment, including any order of reimbursement.

I. Amend § 52.4. Requirements and Method of Delivery for Filing Appeals and Complaints with the Board.

The purpose of this regulatory action is to provide that appeals challenging the decision to void the appointment and/or requiring reimbursement must be filed with the Appeals Division within 30 days from the date the Notice of Voided Appointment is sent to the employee.

A. Strike Mention of Voided Appointments in subdivision (e)(1)(P).

Subdivision (e)(1)(P) is amended to have no mention of voided appointments and instead solely addresses withholds from certification.

B. Add a subdivision to address Voided Appointments and Reimbursement Ordered.

Following subdivision (e)(1)(P), a new subdivision, (e)(1)(Q), clarifies that “Appeals challenging a Voided Appointment, including the amount of any reimbursement ordered pursuant to section 243.3, subdivision (c), shall be filed within 30 days of the date that the Notice of Voided Appointment is sent to the Appellant.”

Thus, what was previously subdivision (e)(1)(Q) will now be (e)(1)(R).

II. Amend § 243.3. Compensation or Reimbursement for Voided Appointments.

Current rule 243.3 requires employees who act in other than good faith in securing an appointment to reimburse all compensation resulting from the appointment no matter the circumstances. In order to ensure the fair administration of corrected appointments, including any ordered reimbursements, the Executive Officer or Board should reserve the right to review the circumstances and evidence surrounding the unlawful appointment in order to determine commensurable reimbursement.

As such, rule 243.3, subdivision (c) is amended to clarify that the Executive Officer or Board may require an employee who acts in other than good faith in securing an appointment to reimburse the state all or a portion of, the compensation resulting from the unlawful appointment.

In instances when the CalHR takes action to correct or void an appointment within one year after the appointment because an employee acted in other than good faith in securing the appointment, the CalHR will refer the matter to the Executive Officer who will then make a determination whether to require the employee to reimburse all or a portion of the compensation resulting from the appointment.

III. Amend § 243.6. Right to Appeal or Reconsideration.

Section 243.6 clarifies that the appeal procedures applicable to decisions by the Executive Officer or CalHR to void an appointment and/or order reimbursement pursuant to section 243.3 are set forth in section 52.4, subdivision (e)(1)(Q). Additionally, section 243.6 provides that petitions for reconsideration of a Board's order to void an appointment and/or order reimbursement resulting from the unlawful appointment must be filed with the Board within 30 calendar days of receipt of the Board's final decision.

A. Amend Section 243.6, subdivision (a).

Subdivision (a) is amended to mention requiring reimbursement of compensation pursuant to section 243.3, subdivision (c), in addition to voiding the appointment, as set forth in section 52.4 subdivision (e)(1)(Q).

B. Amend Section 243.6, subdivision (b)

Subdivision (b) is also amended to mention requiring reimbursement of compensation pursuant to section 243.3, subdivision (c), in addition to voiding the appointment.

ECONOMIC IMPACT ASESMENT:

The proposed regulations set standards only related to the Board's appeal procedures. Therefore, the adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

The adoption of these regulations, however, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action includes an updated civil service hearing process.

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TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS:

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS:

Not applicable. The Board is not a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

SIGNIFICANT ECONOMIC IMPACT ON BUSINESS:

The proposed regulations set a standard only related to Board's appeal procedures. Accordingly, it has been determined that the adoption of the proposed regulations would not have a significant, statewide adverse economic impact affecting California businesses, including the ability of California businesses to compete with businesses in other states.

CONSIDERATION OF ALTERNATIVES

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.